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ABSTRACT

This paper explores the question of the use of public state funds to support Catholic or any other denominational, nonpublic school. Thomas Sobol, Commissioner of Education, asked the Blue Ribbon Panel to examine the following significant matters: (1) the stress on tradition and work-related economic values derived by graduates of Catholic schools; (2) a recognition that declining enrollments and the closing of Catholic schools constitutes a potentially serious economic problem for the public; and (3) the need for the Panel to formulate creative ways, as well as workable and timely strategies, to stabilize enrollments and reverse the trend to close Catholic schools. The Panel's primary recommendations called for the development of legislation which would provide parents income tax credit for tuition, for other education-related expenses, for donations to schools and their programs and for scholarship funds donated to benefit at-risk students of public or nonpublic schools. The controversies and rationales regarding the use of monies for nonpublic schools are analyzed. The case is made to exclude nonpublic schools from receiving public funds. (EH)

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THE POLITICS OF PAROCHIAID

AN ANALYSIS OF THE 1993 REPORT ON THE ROMAN CATHOLIC SCHOOLS IN NEW YORK STATE

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April 23, 1994

"Public interest should logically follow public dollars. Acceptance of tax funding should sooner or later compel nonpublic schools to play by the same rules applicable to public schools. This could and should cost Catholic and other nonpublic schools their independence and their denominational distinctives. Church authorities, however, apparently want to have their cake and eat it too, to take the public dollar but not the public control that should go with it"

Doerr

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; ..."

Initial sixteen words of the First Amendment
U.S. Constitution

"Neither the state nor any subdivision thereof shall use its property or credit or any public money, or authorize or permit either to be used, directly or indirectly, in aid or maintenance, other than for examination or inspection, of any school or institution of learning wholly or in part under the control or direction of any religious denomination, or in which any denominational tenet or doctrine is taught, but the legislature may provide for the transportation of children to and from any school or institution of learning."

Article XI - Education
Constitution of New York State

"No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion."

Everson v New Jersey

"The Board recognizes the rights of parents to choose schools that provide an education consistent with their religious or philosophical values . . . ."

New York State Board of Regents

Aim

The primary aim of this paper is to inquire into the question, Should public funds, extracted by the force of law from all taxpayers, be used, directly or indirectly, wholly or partially, to support Catholic or any other denominational, nonpublic schools?

Method

To pursue this aim I shall

1. Identify and examine the essential elements of the charge which was addressed to the Blue Ribbon Panel by the Commissioner of Education;

2. Identify and examine the primary recommendation which emanated from the work of the Panel as a result of pursuing this charge;

3. Analyze the Panel's primary recommendation; and

4. Project three likely consequences for the citizens of New York State if the recommendation which emanated from the Panel is transformed into a social policy in New York State.

Assumptions

The writer of this paper assumes that

1. Catholic school authorities would never allow their schools to close enmasse.

2. The Blue Ribbon Panel which developed these reports percieved its task as one which was to recommend ways in

which the amount of public tax dollars currently being allocated to the support of Catholic schools in New York State could be enhanced.

3. The values revealed in both the U.S. Constitution and the Constitution of the State of New York are accepted by a vast majority of the citizens of New York State.

Disclaimer

This paper in no way criticizes the faith claims of the Catholic Church, or questions the right of any religious body to operate private schools, or the right of parents to choose to send their children to them. Nor does it question the integrity, competence, or dedication of the men and women who administer and/or teach in Catholic schools.

The Panel's Charge

Let us begin with the charge which was directed to the panel by Commisioner of Education, Thomas Sobol. It read:

> "Catholic schools have a long history of providing quality education for their graduates who, in turn, strengthen the pool of workers available throughout the State. This Panel has been convened to examine the current condition of Catholic school education in New York State. Your first step will be to acquaint yourselves with the demographics, accomplishments and problems facing Catholic schools today and the impact that Catholic school closings and declining enrollments could have on the public sector. (A topical paper will be provided to the Panel with background which should help launch

this issue review process.)* The Panel's discussion of these issues should lead to the formulation of recommendations on creative ways to help stablize enrollment or reverse the current pattern of Catholic school closings while ensuring that the quality of education provided in these schools is maintained. The recommendations will be presented to the Commissioner for further action, as appropriate. The breadth of representation on this Panel should assure that your consensus recommendations will reflect workable and timely strategies to address these concerns.

"Since a pilot program to provide vouchers to parents of children attending public and nonpublic schools has already been rejected by the Board of Regents, the Panel is advised not to consider the issue of vouchers in their deliberations about sources of support for Catholic schools." (Carey, 6).

Several significant matters emerge in this charge. First there is a stress on tradition, and on the work-related economic values derived by graduates Catholic schools. On both counts it is claimed that these schools have made a significant contribution to the education of New York's children and youth for many years. Tradition and economic value, then, are employed as the basic justification for the decision to convene the panel.

Second, a recognition that declining enrollments and the closing of Catholic Schools constitutes a potentially serious economic problem for the public. Implicit here is the potential threat which further declines and closings portends for the

*Note: Statement in parentheses was a part of the charge from the Commissioner.

state because of their potential for justifying the need to increase taxes to pay for the education of students no longer being provided by the Catholic Schools.

Third, stress is placed on the need for the Panel to formulate recommendations on *creative ways*, as well as *workable and timely strategies*, to stabilize enrollments and reverse the trend to close Catholic schools, Two implications suggest themselves here: (1) somehow ways must be created which will enable the legislature to allocate public tax dollars to the support of a religious establishment within the framework of both the U.S. and the New York State constitutions; and (2) only if such creative ideas can be formulated will it be possible to justify additional tax support for these schools. Relative to the constitutional question, one of the Panel reports stipulates that "For the common good, all efforts deemed to be constitutional should be made to assist Catholic schools in overcoming their financial crisis . . . . Such programs should [be] . . . . deemed to be constitutional based upon objective, legal analysis." (Carey, 3).

The fundamental aim which ought to guide the deliberations of the Panel is clearly and unequivocally revealed in the final paragraph. Their task is to identify and recommend means by which Catholic school authorities can obtain additional funding by the use of public tax dollars.One caveat was expressed to the Panel. Any methods for producing

funds to support Catholic schools which might emanate from the Panel which would suggest the use of vouchers would not be acceptable to the Board of Regents, and presumably not to the Commissioner.

Recommendation of the Panel

The Panel's primary recommendation calls for the development of legislation which would provide parents who freely choose to send their children to Catholic schools with an income tax credit for tuition, for other education-related expenses, for donations to these schools and their programs, and for scholarship funds donated for the benefit of at-risk students attending either public or nonpublic schools. (Carey, 5).

Specifically, "legislation should be enacted which would provide State income tax credits (1) for tuition and education-related expenses for one's own children, and (2) for donations to schools, programs, and scholarship funds for the benefit of other children. Both credits would apply to children attending either public or nonpublic schools, with the latter credit available to personal and corporate taxpayers for donations that exclusively benefit at-risk students.

"The primary purposes of such legislation," according to the Panel, "are to expand and strengthen fiscal support of elementary and secondary education, both public and nonpublic, in New York State; to support and encourage parental involvement in the education of their children; to provide special educational opportunities for at-risk pupils;

to maintain the diversity and pluralism of education; to preserve Catholic and other nonpublic schools as a beneficial educational resource in New York State; and to encourage special support for the education of urban and minority pupils in all schools, many of whom are at-risk." (Carey, 3-4).

Such legislation should "also include the availability of tax credits for the payment of tuition and other educational expenses, or for contributions to programs and scholarship funds for the benefit of a student who is not one's child or dependent but who would be considered at-risk. Such a credit would be limited to twenty-five percent of the donation not to exceed one thousand dollars for a joint or individual return." (Carey, 4).

Further, "to encourage the support of business and industry, the legislation would also amend corporation tax law to provide for a tax credit for contributions made in support of particular schools, programs, and scholarship funds targeted for children at-risk." (Carey, 4).

Finally, "legislation should be enacted which would provide for equitable participation of nonpublic school students in State-funded learning technology initiatives, such as distance learning, telecommunications, high-performance computing, interactive media, videodisc and CD-Rom technology, educational television, computer-based instruction, and electronic information/research networks." (Carey, 4)

Out of these recommendations for tax credits emerge

several significant matters. First, there is the use of the word 'public' along with 'nonpublic' on at least two different occasions. This is a ploy of course, though an interesting and potentially successful one. By using the pair, 'public and nonpublic', the Panel appears to be employing a tactic which has been successfully utilized in the state of Minnesota, a tactic which the Supreme Court upheld in its Mueller decision. But, in my judgment, it is a ploy nonetheless. The sole purpose of these recommendations is to procure money from tax payers throughout the state to be used as Church school authorities deem fit, "while safeguarding the independent nature of nonpublic schools; . . . ." (Carey, 3)

This desire to obtain tax support without accountability controls is clearly revealed in the publications produced by the National Catholic Education Association (NCEA) which consistently emphasizes "that Catholic Church officials want and will continue to campaign for tax support for the Church's elementary and secondary schools, though it wants none of the reasonable public controls which should follow tax dollars." (Doerr, 57).

The right to tax support for Catholic Schools is also revealed in the Code of Canon Law. Canon 793, for example, stipulates that "Parents . . . have the right to make use of those aids to be furnished by civil society which they need in order to obtain Catholic education for their children." (Coriden, 564).

One also finds the language of 'at-risk' students being

employed, not only in these recommendations, but throughout both of the reports. What does this language entail? 'At-risk' is consistently defined as consisting of such multiple risk factors as ". . . family income below $15,000, single-parent household, parents who had not completed high school, and students with a sibling who dropped out of school." (Carey, 2). Other at risk factors include "limited English proficiency and staying home alone for more than three hours." (The University of the State of New York, 2).

Analysis

Let us analyze the recommendations of the Panel by examining two significant matters, purpose and tactics.

PURPOSE: For us to consider the wisdom of pursuing the recommendations of the Panel it is appropriate for our analysis to commence with a clear understanding of the purposes of Catholic Schools. Unfortunately, the Panel barely touches on this highly important matter. Indeed, in only one of the two Panel documents is the purpose of Catholic schooling even hinted at. This occurs in the assertion that "Nonpublic schools are established with specific purposes in mind; most often that purpose is religious education." (The University of the State of New York, 1). A number of writers have stressed the significant nature of this purpose.

For instance, Otto Kraushaar, a strong supporter of private education, clearly concluded from his major study of nonpublic schools that "Catholic, Protestant, and Jewish schools continue to conceive their religious mission as

central, as transcending even their growing commitment to academic learning." (Krauschaar, 22).

McKenzie emphasizes the fact that the "The Roman Catholic schols have always placed religious education as the primary purpose of the schools with no attempt to mask this under some other purpose . . . . The principle on which church education is conducted goes far beyond formal religious instruction. Children also learn the way of worship; they are taught respect and reverence for prelates, clergy, and religious. They are daily reminded of their identity as Catholics. They grow up in an atmosphere of Roman Catholic traditions and attitudes which are communicated not so much by instruction as by prolonged close association under the direction of professional religious persons." (McKenzie, 294-295).

McCluskey notes further that religion pervades the Catholic school curriculum, "particularly in literature, history and the social studies." He adds that, "The function of the Catholic school is not merely to teach the formulas of the Catholic religion but . . . . 'to impart in a thousand ways, which defy formularization, the Catholic attitude toward life as a whole.'" (McCluskey, 74, 78).

McDermott cites Pope Pius XI as saying in 1938 that "every subject taught [should] be permeated with Christian piety." Permeation, then, to McDermott, is the ideal for Catholic schools, which "propose many Christian values to the students, above board and out in the open, in subject areas and

in co-curricular activities, in liturgies and other religious celebrations." (McDermott, 50-51).

TACTIC: Ever since serious efforts were initiated by Catholic School authorities to acquire public tax dollars to help offset the cost of their freely made decision to construct and operate their own schools, these authorities have employed one significant lever as a means to achieve their ends. That lever has been the use of implied threats, generally quite clear and unequivocal in nature, suggesting that one serious consequence of the closing of Catholic schools would be the increased tax burden which the larger public would have to assume in order to cope with the influx of students who would now attend public schools. The two reports continue this tactical thrust.

Consider the following arguments:

(a) "... no data exist which indicate the trend of school closings and declining enrollments will reverse under existing conditions . . . . should our efforts fail, public school districts, already experiencing serious problems educating at-risk students and enduring significant fiscal burdens, would be confronted with assuming additional and overwhelming responsibilities related to the almost 300,000 students presently attending New York State Catholic schools. (Carey, 9);

(b) "Catholic schools . . . relieve the fiscal burden on taxpayers of 280,000 students who would otherwise be the responsibility of public schools . . . . Should Catholic schools

cease to exist, . . . dollar-strapped public school districts, already experiencing increased pressure to limit rising costs, would bear the additional financial burden associated with educating resident students now attending Catholic schools. This could necessitate further State taxes for all New Yorkers since additional revenues would be required. (Carey, 2-3);

(c) "If a Catholic school closes, some of the students . . . may elect to attend the local public schools, increasing the number of public school pupils served and public school costs for many services, ... additional costs may be incurred in the form of an additional . . . . teacher's salary, possible additional school construction or leasing costs for new classroom space, and some additional supply costs." (The University of the State of New York, 11);

(d) "The Catholic schools are an asset to New York State, both in relieving the fiscal burden of 280,000 students that may otherwise be the responsibility of public schools, . . . unless these schools are assisted in meeting their financial crisis, the State risks losing this asset. (The University of the State of New York);

(e) "Increasing enrollments present problems for dollar strapped public school districts. The Catholic school sector indirectly helps the public sector in this respect by reducing the number of students that public schools (with high per-pupil costs) must educate. (The University of the State of New York, 29).

(f) "... when public schools do not have to educate their

resident students who are attending Catholic schools, the local school districts benefit by having more monies available to spend on the students in the public schools . . .The large deficits in some urban Catholic schools . . . can no longer be underwritten by Church funds . . . ." (The University of the State of New York, 29-30).

Likely Consequences

Let us look briefly at three likely consequences if policy makers adopt the recommendations which the Panel has developed: contradiction, nonaccountability, and divisiveness.

Contradiction: The allocation of public tax dollars in any amount to support Catholic Schools, or any other denominational schools, clearly will result in the continuation of the clear contradiction with the U.S. and the New York State Constitutions which prevails at the present time because of the vast amount of public tax money which is going to the support of Catholic Schools. Neither tradition, or the increased cost of education which may have to be borne by the larger public if Catholic schools are closed, ought not blind us to the fact that it would be plainly detrimental, certainly immoral, deeply upsetting to many, for our state legislators, or our Board of Regents, to engage in the construction of social policy which compels citizens in New York State to pay for the support of a form of religious schooling, of religious indoctrination, with which they do not concur.

Accountability: If the Panel's recommendations are adopted we are likely to continue to witness the use of public tax dollars without any public accountability for how they will have been used. This is as clear an example of 'taxation without representation' as one is likely to be able to find.

Divisiveness: There no doubt that, for many citizens who are aware of the amount of money which is allocated to the support of Catholic Schools in New York State, any effort to continue, even enhance, the amount of money which is allocated to these schools will generate strong feelings of concern, upset and anger.

Conclusion

Given the seriousness and the potential for inducing volitle societal disruption of each of these likely consequences it is not difficult to conclude that the proper answer to the question, ***Should public funds, extracted by the force of law from all taxpayers, be used, directly or indirectly, wholly or partially, to support Catholic or any other denominational, nonpublic schools?***, should be a resounding NO.

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